

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
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Rules and regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CG Docket No. 92-90
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**COMMENTS OF THE NATIONAL ASSOCIATION OF
CONSUMER AGENCY ADMINISTRATORS**

The National Association of Consumer Agency Administrators (“NACAA”) submits the following commentary in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking and Memorandum Opinion and Order, regarding the implementation of the Telephone Consumer Protection Act of 1991 (“TCPA”) and request for comments.

NACAA is a non-profit association representing over 160 consumer agencies at all levels of government in the United States, and several other countries. Member agencies provide direct constituent services, including consumer complaint mediation, consumer education, the dissemination of information to both consumers and businesses about their respective legal rights and responsibilities, and the enforcement of consumer protection laws and regulations. NACAA supports public agencies responsible for ensuring a fair and informed marketplace, and those representing the rights of consumers.

By these comments NACAA seeks to encourage the Commission to continue its efforts to provide consumers with privacy protections that might well be usurped through

increased unsolicited use of the telephone, facsimile machine and wireless services and the new technologies telemarketing firms can now employ. The opportunity to enter a consumer's home through electronic means to sell a product or service is a privilege not a right and must not be abused by excessive, unwanted or inappropriate means and methods.

In March of 2002 NACAA submitted comments to the FTC Notice of Proposed Rulemaking in which the agency proposed amending its Telemarketing Sales Rule. NACAA urged the FTC to consider the creation of a national 'do not call' registry in light of the significant consumer interest in such a system over the company-specific do-not-call approach, and the greater level of consumer protection it can offer. NACAA believes that the do-not-call registry is simplest way for consumers, who so choose, to limit the greatest number of unwanted calls and this would be the preferred approach for governmental regulators to take. NACAA now likewise urges the FCC to fully explore this approach.

The number of states with do-not-call registries grows as the public demand for them continues and the statistics on the massive numbers of consumers to sign up for these lists verify this demand. NACAA favors the FCC investigation of this option as well and recommends that any FCC effort continues the approach often taken in the states to make sign-up access free or at very low cost to consumers; simple and quick, and long lasting without any frequent, if any, need to renew one's place on the list.

Consumers report to NACAA member agencies their growing level of frustration with the trend of long recorded messages left of answering machines or voice mail systems and the fact that no option is offered during these messages to be put on a do-

not-call list. Predictive dialers and autodialers usage has skyrocketed and this practice is especially troubling to consumer “victims” of the silence or hang-ups when they answer their telephones. A consumer cannot even attempt to request to be placed on these callers’ do-not-call lists. The efforts of the FTC and the FCC as well as the successes or failures experienced on the state level should be harmonized in practical and efficient ways. Some NACAA member agencies have been involved in the considerable development and now management of state do-not-call registries. A most effective methodology for the FCC to use, in NACAA’s opinion, would be a thorough study of these state registries, their rules and regulations and of the FTC’s analysis to date of this approach on the federal level to consumer privacy protection from telemarketing abuse. This established feedback and research would help to best evaluate the potential FCC role in a national do-no-call list and to evaluate the issues of pre-emption and burdens on both the consumer and business interests if two levels of do-not-call list were to be in place. The theme of low or no cost and easy access to consumers must dominate the process and results. NACAA wants good state efforts preserved and not preempted but any federal effort and believes the average consumer will not object if they need to request to be put on more than one list. NACAA respectfully realizes that the federal rulemaking result might prove to be more limited in regulatory scope than some state do-not-call registry efforts and therefore posits that consumers will accept some need to duplicate their own efforts to register to block calls if it can result in a more comprehensive result rather than a weaker outcome than they might now enjoy.

The Commission seeks comments on the technologies of autodialers, predictive dialers, and answering machine detection technology and what requirements or

restrictions might be imposed as to these technologies. NACAA asserts that there is widespread consumer frustration, anger and in some cases, fear about the telemarketing industry's use of such technology. Rather than offer detail suggestions NACAA believes that a comprehensive do-not-call system on potentially both the state and federal level might be the best cure for these consumer concerns. This comment assumes though, that any regulations that the Commission might impose as to these devices include, at a minimum, a requirement that all these technologies must be able to incorporate the data from the do-not-call registries and eliminate those telephone and facsimile numbers from their systems.

NACAA considers calls containing "artificial or prerecorded messages containing offers for free goods or services (including free estimates or free analyses) and messages with "information-only" about products" to be subject to the same requirements or restriction as more direct telemarketing sales calls. Any do-not-call list requirements of telemarketers should apply here as well.

CONCLUSION

NACAA appreciates the opportunity to provide these comments to the Commission to assist in the review and potential development of more current and effective rules and regulations prompted by the Telephone Consumer Protection Act of 1991. NACAA invites the Commission to contact our Association for further clarification of our positions, or to request that NACAA respond to any questions that the Commission may have regarding these comments.

RESPECTFULLY SUBMITTED,

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